GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

TWD – Appeal Petition filed by Smt. Thota Raja Lakshmi, D/o. Chenchaiah, Occ:UDC, Town-II, APSPDCL, Nellore Division & Mandal, SPSR Nellore District filed under Section 7 of the Act 16 of 1993 against the proceedings Rc.No.C5(M)/262/2005, dated 24.12.2013 of the District Collector, SPSR Nellore cancelling her ST 'Yanadi' Community Certificate under Section 7(2) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (A.P. Act No.16/1993) – Appeal Petition dismissed - Orders - Issued.

TRIBAL WELFARE (CV) DEPARTMENT

G.O.Ms.No.40. Dated.11.07.2023

Read the following:-

1. Proceedings of the District Collector, SPSR Nellore District Rc.No. C5(M)/262/2005, dated 24.12.2013.
2. Appeal Petition filed by Smt. Thota Raja Lakhmi, D/o, Chenchaiah, Occ: UDC, Town-II, APSPDCL, Nellore Division & Mandal, SPSR Nellore District, dt.05.09.2014.
3. Govt. Memo No.8578/CV2/2014, TW(CV2) Dept., dt.14.11.2014.
4. Govt. Memo No.8578/CV2/2014, TW(CV2) Dept., dt.24.02.2015.
5. From the District Collector, SPSR Nellore, Lr.No.Rc.No.C5(M)/262/2005, dated 13.03.2015.
6. Govt. Memo No.8578/CV2/2014, dated 31.08.2015, 23.10.2018, 27.12.2018 & 09.01.2019.
7. Govt. Memo No.5345/CV2/2015, dated 02.02.2019.
8. Govt. Memo No.8578/CV2/2014, dated 24.02.2023.

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ORDER:

In the Proceedings 1st read above, the Collector & District Magistrate, SPSR Nellore had issued orders cancelling the "ST-Yanadi" community certificate of Smt. Thota Raja Lakshmi, D/o. Chenchaiah obtained from the then Tahsildar, Nellore in Caste Certificate No.1120/94, dt.03.02.1994.

2. In the reference 2nd read above, Smt. Thota Raja Lakshmi, D/o. Chenchaiah has filed Appeal Petition before the Government against the Proceedings of the District Collector, SPSR Nellore. After examining the said Appeal Petition, Government have admitted the same and Para-wise remarks on the grounds filed by the Appellant along with connected records were called for from the District Collector, SPSR Nellore in Govt. Memo 3rd read above.

3. In the letter 5th read above, the Collector & District Magistrate, SPSR Nellore has furnished the para-wise remarks on the Appeal Petition filed by Smt. Thota Raja Lakshmi, D/o. Chenchaiah.

4. The said Appeal Petition has been posted for hearing before the Hon'ble Appellate Authority on several dates and finally on 07.03.2023 duly informing the same to the Appellant and the Counsel for the Appellant vide reference 8th read above. During the course of the hearing and on perusal of the records/ the copies of evidences/ academic record/ grounds & Written arguments filed by the Appellant/ Para-wise remarks submitted by the District Collector, SPSR Nellore and proceedings of the District Collector, SPSR Nellore, dated 24.12.2013, the Appellate authority has observed that;

- The present Appeal is filed against the orders of the District Collector, Sri Potti Sriramulu Nellore District in Vide Rc.C5 (M)/262/2005, Dated: 24.12.2013 exercising his powers conferred u/s. 5(1) of the AP (SC, ST & BCs) Regulation of Issue of Community Certificates Act, 16 of 1993, read Rule 9(7) of AP (SC, ST & BC) Issue of Community, Nativity and Date of Birth Rules, 1997, cancelling the Yanadi (S.T) Caste Certificate issued to Thota Rajya Lakshmi, D/o. Chenchaiah/ Appellant here in, by the Tahsildar, Nellore in No.1120/94, dt.03.02.1994.

- Perused the written arguments submitted along with the documents and Parawise remarks, connected records. The counsel for the appellant appeared on 07-03-203 and requested time to file written arguments along with documentary evidences if any. On 13-03-2023 counsel for the appellant submitted written arguments along with documentary evidences. The following order is made after perusal of the material documents available on the record.

[Contd..on P.2]

- The contention of the Appellant is that her school certificates, and school records of her brothers and service record of her elder brother and also caste certificates issued by the Mandal Revenue Officer, Nellore from the year 1988 to 2010 show that she belongs to Yanadi (S.T) Community and that the School records are sufficient proof under the Rule 8(d) 5 of Rules 1997 to prove that she belongs to ST, but the District Level Scrutiny Committee (DLSC) and District Collector have not considered the School records and community certificates and the report given by the DLSC is contrary to the Rules and cannot be relied upon and the order passed by the collector was in violation of Section 5 (1) of A.P. Community Certificate Act, 1993 and in violation of Principles of natural justice. The further contention of the Appellant is that earlier report of the Vigilance Inspector of Police, APSPDCL given in (2004) shows that the allegation against her ST caste is false as such enquiry by the Collector is illegal. The further contention is that she married a non S.T candidate, however her caste continues to be her father's caste i.e. Yanadi (ST).

- An enquiry in to the claim of the appellant as ST was initiated by the Collector on a direction given by the Commissioner of Tribal Welfare vide Rc.No.2037/2011/TRI/VC-B, dt.12.12.2012 on an information that the claim of the appellant herein is doubtful as the information furnished by her is incomplete and not tallied with other records and the information collected by the Project Officer, ITDA. After receiving the complaint from the Commissioner of Tribal Welfare, the District Collector referred the matter to the DLSC for an enquiry.

- The DLSC conducted an enquiry under the Rules, 1997, and the appellant here in appeared before the DLSC on 26-10-2013 and offered her written explanation in support of her claim stating that she is the daughter of Thota Chenchaiah and Smt. Subbayamma, she was taken care by a Brahmin and she got married a non tribal- Gajubalija(OC).

- As per the reports, the DLSC after considering the written explanation and connected records and marital status of the parents of the claimant and present relations with their blood relatives, found that the appellant here in is not "Yanadi" (S.T) and the explanation of her is not supported by any documentary evidence and stated that she was told by her family that they belong to Yanadi (ST). The DLSC has disbelieved the explanation of the appellant herein offered. The DLSC has reported that the individual has failed to prove the burden of proof as per the provisions of Act No.16/93 and also provisions of G.O.Ms.No.58, (SW) dt.12.05.97 and that she has failed to prove her caste as Yanadi (ST) before the DLSC on 26.10.2013. As per the report the surname Thota is not found in Yanadi-ST and found in Balija (OC) and that the claimant is not following the traditional customs of Yanadi community and has no social affinity with Yanadi ST people, and that she obtained certificate in fraudulent manner and recommended for cancellation of the certificate together with criminal action to be initiated against the individual.

- The District Collector after perusing the report of the DLSC cancelled the Caste Certificate issued to the appellant here in under the Act 1993 and Rules 1997 made there under.

- The point for the consideration is as to whether the school certificates produced by the Appellant are sufficient proofs to claim her status as ST-Yanadi? Whether any prejudice caused to the appellant for non supply of the enquiry report by the District Collector?

Issue No 1:

- During the enquiry before this authority, the Appellant filed written submissions along with a few documents in support of her claim for verification and perusal. The documents are her 10th Class (1986) and Intermediate (1988) and Degree (1993) Transfer Certificates(T.Cs) which are showing that she belongs to Yanadi (ST).

- The Community Certificate(CC) issued by MRO, Nellore in 1988 endorses that as per the TC issued she belongs to Yanadi. The Subsequent CC issued by the same authority in 1990 shows she belongs to Yanadi, similarly another CC was issued in 1994 which further shows that as per the TC, and another CCs issued in 1995, and 2003, 2010, further show that she belongs to Yanadi-ST in the Community Certificates (1988) and 1990 issued by MRO, Nellore show that she belongs to Yanadi, and CC (1990).

- The marks lists for her studies are not indicating her community status as ST Yanadi. The Service Record of her brother-TC Krishniah, shows that he belongs to (Hindu) Indian. However it is also written there as Yanadi-ST which is suspicious. Because the writing

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is different. Hence it seems it is added later. His community certificates as Yanadi-ST were given by Tahsidlar, Nellore noting that as per the TCs. The TC bearing No.720/84-86 produced by her brother Thota Chenchu Krishnayya, shows that he belongs to Yanadi-ST and the TC (1994-95) and CC (2003) issued to her younger brother Thota Venkateswarlu show that he belongs to ST-Yanadi and his nativity certificate is not indicating any caste. Admittedly her husband caste is Gajula Balija, and accordingly her TC also filed.

- The basis for giving ST community certificates to the appellant or her family members by the Tahsildars, Nellore of different times as ST-Yanadi, was the Transfer Certificates(TCs) issued by the education institutions. The appellant failed to produce any document to show that the entries in the TCs are based on any community certificate issued by a competent authority or any birth registers maintained by the authorities.

- The recitals in the TCs produced in respect of community status are self served, without any proof to the contents therein. Therefore the entries in the TCs of the recent past produced by the appellant cannot be the sole basis to determine the community status of the appellant as ST-Yanadi in the absence of other independent corroborative evidence in support of such TCs.

- The Supreme Court in Anand vs Committee For S.&V. Of Tribe ... on 8 November, 2011, held that while dealing with documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In this case the TCs produced are of recent origin.

- The claimant appellant is claiming that her parents belong to ST-Yanadi. No recorded evidence was produced by the appellant to substantiate this claim. The appellant also failed to produce entries in birth registers of her or her family members to show that they all belong to ST-Yanadi. Admittedly she was brought up by a Brahmin as such there is no social affinity with the Yanadi-ST community.

- Clause 5 of Rule 8 of AP SCs, STs and B.Cs - Issue of Community, Nativity and Date of Birth Certificate Rules 1997 mandates that the Scrutiny Committee shall examine the school records, birth registration certificates, if any, furnished by the persons during the enquiry. It may also examine any other person who may have knowledge of the community of the applicant. With reference to the claims of Scheduled Tribes, it may examine the anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies/method of burial of dead bodies etc., of that particular tribe, to finalise its recommendations to the Competent Authority.

- Therefore school records as claimed by the appellant is not sufficient proof to determine the community status of an individual under the law which are of recent origin.

- Therefore the evidences produced are not substantiating to prove the claim of the appellant as ST-Yanadi, when the burden of proof is on the appellant under Section 6 of the Act to establish that she belongs to the community to which she claims to belong, it is for her to produce adequate and acceptable evidence in support of her claim that ST-Yanadi. Therefore the conclusion made in the impugned order is valid, proper and cannot be found fault with it.

Issue No-2:

- The next question that arises for the consideration is whether the impugned order of cancellation of community certificate passed in the present case suffers from any infirmity. The counsel for the Appellant argues that the copy of the report of the DLSC was not served on the appellant as such the impugned order is against the Section 5 (1) of A.P. Community Certificate Act, 1993.

- It is necessary to refer the proviso of (6) of Rule 9 says that the Scrutiny Committee shall furnish its findings to the District Collector within 60 days from the date of the receipt of the reference from the District Collector. Further proviso (7) of the Rule 9 says that the District Collector shall then decide whether the certificate holder is genuine or fraudulent and in case of is having obtained a Community, Nativity and Date of Birth Certificate fraudulently, the District Collector shall pass an order cancelling the certificate issued, within one month from the date of receipt of the findings of the Scrutiny Committee and shall issue notification to that effect, to be published in the District Gazette.

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- The records show that an opportunity was given to the appellant to submit his explanations with evidences if any by the DLSC as contemplated under the Rules, 1997. Moreover the appellant here in has filed documentary evidences in support of her claim before this appellate authority for taking decision. The appellant failed to show how the non serving of the copy of the DLSC has caused prejudice to him to defend his community status claim as ST-Yanadi either before this authority or the District Collector.

- As laid down by the Supreme Court in Kumar Madhuri Patil & another Vs Addl. Commissioner, Tribal Welfare, (AIR 1995 SC), when it is found to be a case of fraud played by the concerned, no sympathy and equitable considerations can come to his rescue.

- In view of the discussions made above, there is no irregularity or illegality in cancelling the community certificate issued to the Appellant herein as ST-Yanadi.

- Therefore the impugned order passed by the District Collector, Sri Potti Sriramulu Nellore District vide Rc.C5 (M)/262/2005, Dated:24.12.2013 is hereby upheld. In the result, Appeal Petition is dismissed. As a sequel interim orders if any passed in the matter are hereby vacated. Appeal is disposed of accordingly.

5. Government after careful examination of the appeal petition and the circumstances stated supra and in exercise of the powers conferred under Section 7(2) of A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (Act 16 of 1993), and rules made there under, decide that the appeal petition filed by Smt. Thota Raja Lakshmi, D/o, Chenchaiah does not deserve any interference. Hence, the proceedings in the Rc.No.C5(M)/262/2005, dated 24.12.2013 of the District Collector, SPSR Nellore are hereby upheld and the appeal petition filed by Smt.Thota Raja Lakshmi, D/o. Chenchaiah is hereby dismissed. The certificate issued by the then M.R.O, Nellore, deemed to be cancelled.

6. The Collector & District Magistrate, SPSR Nellore is directed to take necessary consequential action in the matter, as per the A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (Act 16 of 1993), and rules made therein.

7. The records (Rc.C5(M)/262/2005, containing pages CF 1 to 265) received from the Collector & District Magistrate, SPSR Nellore are returned herewith in original to the Collector & District Magistrate, SPSR Nellore and he is requested to acknowledge the receipt of the same, immediately.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

KANTILAL DANDE
SECRETARY TO GOVERNMENT

To
The Collector & District Magistrate, SPSR Nellore District.
(With original Records)

Smt. Thota Raja Lakhmi, D/o, Chenchaiah,
Occ: UDC, Town-II, APSPDCL, Nellore Division & Mandal,
SPSR Nellore District-524001.**(By RP)**

Sri A. Jairajulu, Advocate to the appellant.
(through the appellant)

Copy to:

The Managing Director, APSPDCL, Nellore Division & Mandal,
SPSR Nellore District.

The OSD to Hon'ble Deputy CM(TW).
The PS to Secretary(TW).
Sf/Sc.

// FORWARDED:: BY ORDER //

Ch Srinivasulu
SECTION OFFICER